

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

WILLIAM B.,

Plaintiff,

v.

Civil Action No.
5:21-CV-0189 (DEP)

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

AMDURSKY, PELKY LAW FIRM
26 East Oneida Street
Oswego, NY 13126

AMY CHADWICK, ESQ.

FOR DEFENDANT

SOCIAL SECURITY ADMIN.
625 JFK Building
15 New Sudbury St
Boston, MA 02203

LUIS PERE, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security ("Commissioner"), pursuant to 42 U.S.C.

§§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.¹ Oral argument was heard in connection with those motions on August 19, 2022, during a telephone conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

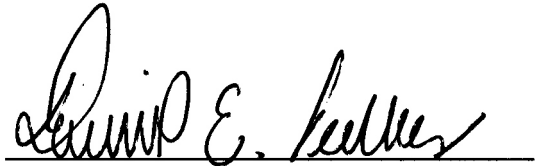
ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order, once issue has been joined, an action such as this is considered procedurally as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

Dated: August 26, 2022
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----x
WILLIAM B.,

Plaintiff,

vs.

5:21-CV-189

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----x

TRANSCRIPT OF DECISION

BEFORE THE HONORABLE DAVID E. PEEBLES

held on August 19, 2022

James Hanley Federal Building, Syracuse, New York

APPEARANCES (by telephone)

For Plaintiff: AMDURSKY, PELKY LAW FIRM
26 East Oneida Street
Oswego, NY 13126
BY: AMY CHADWICK, ESQ.

For Defendant: SOCIAL SECURITY ADMINISTRATION
25 New Sudbury Street
Boston, MA 21235
BY: LUIS PERE, ESQ.

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(315) 234-8546*

1 THE COURT: Let me begin by thanking both counsel
2 for excellent and spirited presentations.

3 The background of this matter is as follows.

4 Plaintiff has commenced a proceeding pursuant to
5 42, United States Code, Sections 405(g) and 1383(c)(3) to
6 challenge an adverse determination of the Commissioner of
7 Social Security finding that he was not eligible for the
8 benefits for which he applied.

9 Plaintiff was born in December of 1977 and is
10 currently 44 years of age. He was 41 years old at the
11 alleged onset of disability, that is, the amended onset date
12 of March 7, 2019.

13 Plaintiff resides in Williamstown with his wife and
14 four children, who by my calculation are approximately ages
15 four, seven, ten and eleven years. Plaintiff stands 5-foot
16 9-inches in height and weighs 190 pounds approximately.

17 Plaintiff has a twelfth grade education. He
18 attended Vernon-Verona-Sherrill Central School District where
19 he was in a special education program and he received an IEP
20 diploma. He attended a BOCES diesel and small engine repair
21 course, but states that he did not pass the course. And
22 while in school he repeated one grade.

23 Plaintiff has a driver's license and, in fact,
24 states that he likes to drive. Plaintiff worked from 2007 to
25 2010 as a temporary laborer in various positions and as a

1 farmhand from 2011 to 2016.

2 Mentally, plaintiff suffers from several conditions
3 that have been variously diagnosed, including schizoaffective
4 disorder, antisocial personality disorder, learning disorder,
5 and ADHD. He suffers from anxiety and anger issues.

6 Physically, plaintiff alleges that he suffers from
7 asthma and allergies. Plaintiff has received treatment from
8 various sources, including Physician's Assistant Amy McCune
9 and the Oswego Hospital Behavioral Services where he has been
10 in therapy every other week. There are also two evaluations,
11 psychological evaluations in the record and we'll discuss
12 those in a few moments.

13 Plaintiff has a fairly wide range of activities of
14 daily living. He is able to dress, bathe, groom, cook, help
15 with laundry, sweep and mop. He drives. He engages in
16 repair of machinery and cars. He can mow, weed. He attends
17 picnics with his family. He took his family to a water park.
18 He attends church. He takes his sons to appointments. He
19 watches television, walks, listens to the radio, cares for
20 pets and co-parents his four children.

21 Plaintiff is a smoker and has a not insignificant
22 criminal history, including a period of incarceration.

23 Procedurally, plaintiff applied for Title II and
24 Title XVI benefits on April 10, 2019, alleging an onset date
25 of January 1, 2017, although that was later amended to

1 March 7, 2019. There are prior denials apparently in the
2 record, including one from March 11, 2019 based upon a
3 decision of Administrative Law Judge John Ramos.

4 In support of his application, plaintiff alleges
5 ADHD, learning disorder, depression, asthma, allergies,
6 impulse disorder, and schizoaffective disorder as conditions
7 that limit his ability to perform work functions.

8 A hearing was conducted on September 8, 2020, with
9 the vocational expert by Administrative Law Judge Jeremy
10 Eldred on September 23, 2020. ALJ Eldred issued an
11 unfavorable decision which became a final determination of
12 the Agency on January 26, 2021, when the Social Security
13 Administration Appeals Council denied plaintiff's application
14 for review. This action was commenced on February 18, 2021,
15 and is timely.

16 In his decision, ALJ Eldred applied the familiar
17 five-step sequential test for determining disability, first
18 noting that plaintiff was last insured on September 30, 2021.

19 At step one, he concluded plaintiff had not engaged
20 in substantial gainful activity since the amended onset date.

21 At step two, the ALJ concluded that plaintiff does
22 suffer from severe impairments and impose more than minimal
23 limitations on his ability to perform work functions,
24 including schizoaffective disorder, antisocial personality
25 disorder, learning disorder, attention deficit/hyperactivity

1 disorder, or ADHD.

2 At step three, ALJ Eldred concluded that
3 plaintiff's conditions do not meet or medically equal any of
4 the listed presumptively disabling conditions set forth in
5 the Commissioner's regulations, specifically considering
6 listings 12.03, 12.04, 12.08 and 12.11.

7 The ALJ next concluded that notwithstanding his
8 conditions, plaintiff retains the ability to perform a full
9 range of work at all exertional levels, except as follows:
10 He can understand, remember, and carry out only simple and
11 routine tasks. He can concentrate, persist, and maintain
12 pace in a work setting to the extent necessary to perform
13 only simple and routine tasks. The claimant can interact no
14 more than occasionally with supervisors or co-workers, and is
15 unable to do a job that requires interaction with the public.
16 He can also appropriately deal with ordinary changes in an
17 unskilled occupation that involves only simple and routine
18 tasks.

19 Applying that RFC finding at step four, the
20 Administrative Law Judge concluded that plaintiff is capable
21 of performing his past relevant work as a farmhand, as that
22 position is generally performed, and therefore concluded that
23 he is not disabled.

24 As the parties know, the Court's function at this
25 juncture is extremely limited to determining whether correct

1 legal principles were applied and whether the result is
2 supported by substantial evidence, which is defined as such
3 relevant evidence as a reasonable mind would find sufficient
4 to support a fact. The Second Circuit has noted, including
5 in *Brault versus Social Security Administration Commissioner*,
6 683 F.3d 443 from 2012, that this is an extremely deferential
7 standard. Under the substantial evidence standard, once an
8 ALJ finds a fact, that fact can be rejected only if a
9 reasonable fact-finder would have to conclude otherwise.

10 Plaintiff has raised three essential contentions in
11 this case. First, he argues that the Administrative Law
12 Judge failed to properly evaluate the opinions of Dr. Andy
13 Lopez Williams and Dr. Michael Boucher, both of whom
14 conducted psychological evaluations of the plaintiff.

15 Secondly, he argues that the Administrative Law
16 Judge should have concluded that plaintiff's conditions meet
17 or equal the listings, and specifically challenges his
18 failure to separately address the four domains in the B
19 criteria and erred in finding less than moderate limitations
20 in those areas.

21 And third, he argues that the residual functional
22 capacity is not supported because it is not based on any
23 competent medical opinions and there is no explanation for
24 distinguishing between interaction with different groups, and
25 also he challenges the failure to include any limitation

1 regarding being off task due to his ADHD.

2 The first argument, of course, as I said, centers
3 upon medical opinions, or I should say reports rather than
4 calling them medical opinions, of Dr. Boucher, who rendered a
5 report on May 11, 2019. It appears at pages 283 to 287 of
6 the Administrative Transcript. And Dr. Andy Lopez Williams,
7 who authored a report, a psychological report on October 13,
8 2017. That appears at pages 665 to 668 of the Administrative
9 Transcript.

10 Because of the date of filing of plaintiff's
11 application, this case is subject to the new amended
12 regulations which took effect for applications filed after
13 March of 2017. Under those regulations, the ALJ does not
14 defer or give any specific evidentiary weight, including
15 controlling weight, to any medical opinions or prior
16 administrative medical findings, including those from a
17 treating source. Instead, the ALJ must consider those
18 opinions using the relevant factors which are not terribly
19 different than the factors under the old regulations, but
20 must particularly address supportability and consistency, and
21 must articulate how persuasive each medical opinion was
22 found, and explain how he or she considered the
23 supportability and consistency of those opinions.

24 The ALJ must also consider other factors that are
25 set out but does not have to explain how he or she considered

1 those factors as appropriate in each case. And, of course,
2 where there are conflicting medical opinions in the record,
3 it is incumbent on the Administrative Law Judge to reconcile
4 those opinions and any conflicts. *Veino v. Barnhart*, 312
5 F.3d 578, Second Circuit, 2002. It is not the Court's
6 function to weigh those other than to determine whether the
7 correct legal principles were applied and the weight given is
8 supported under the regulations.

9 Dr. Lopez Williams in his 2017 evaluation conducted
10 various testings and found plaintiff meets the criteria for
11 ADHD Combined Presentation Severe, and issued some
12 recommendations.

13 1. William is recommended to explore individual,
14 insight oriented therapy.

15 2. Given the severity of William's attention
16 impairment, a combined psychologic and pharmacologic approach
17 is recommended, if medically appropriate.

18 3. Due to difficulty maintaining and securing
19 stable employment, William should consider seeking services
20 from ACCES-VR in order to secure occupational supports and
21 services. He would likely benefit from job coaching and
22 accommodations to address his executive and attention
23 deficits.

24 The opinion of Michael Boucher from May of 2019 was
25 based on a psychological evaluation. The findings of

1 Dr. Boucher were as follows. There are currently significant
2 limitations on consumer's academic abilities in the area of
3 reading comprehension and on his capacity to sustain focused
4 attention and concentration. Other limitations are noted in
5 the areas of recent recall memory, verbal reasoning, and
6 motor speed and coordination.

7 The recommendations include the following. The
8 consumer appears to have the intellectual resources needed to
9 benefit from supported job finding and retention services if
10 the work is of a hands-on type of a relatively repetitive
11 nature that does not require frequently changing task demands
12 and it does not overwhelm his still somewhat limited stress
13 and frustration tolerances. He should try to work and/or
14 study in non-distracting settings. He may learn new material
15 better if he takes three (about ten minutes) breaks about
16 every 30 to 45 minutes to get up and move around than if he
17 tries to sit still and work on the same material for
18 prolonged periods of time.

19 The Commissioner has argued that these do not
20 constitute medical opinions. Under 20 C.F.R. Section
21 404.1513(a)(2), and there is a similar regulation that
22 applies to Title XVI claims, a medical opinion is a statement
23 from a medical source about what you can still do despite
24 your impairment and whether you have one or more impairment
25 related limitations or restrictions in the following

1 abilities. And one is essentially your ability to perform
2 physical demands of work activities; two is your ability to
3 perform mental demands of work activities.

4 I agree with the Commissioner that these opinions,
5 these reports do not constitute medical opinions that were
6 required to be analyzed under the new regulations. They
7 don't contain specific functional limitations. One requires
8 at least extrapolation from the statements of those
9 psychologists to translate to a functional limitation. But
10 even if they are medical opinions, I do not see anything that
11 undercuts the residual functional capacity. The
12 recommendations of both are just that; they're
13 recommendations, they're not functional limitations. Words
14 like may benefit from, these are recommendations only and not
15 statements that plaintiff must have these accommodations in
16 an RFC. The distinction is drawn in *Nolcox v. Berryhill*,
17 2019 WL 1331582, from the Northern District of Ohio, 2019, a
18 case cited by the Commissioner.

19 I also note that the reports are not consistent
20 with plaintiff's activities of daily living and treatment
21 notes. I've reviewed the treatment notes and plaintiff is
22 almost consistently referred to as cooperative, respectful,
23 and they show improvement through treatment and medication.

24 I will acknowledge that the Administrative Law
25 Judge's discussion on page 19 of the Administrative

1 Transcript is less than illuminating when it comes to the
2 reports of Dr. Lopez Williams and Dr. Boucher. He only
3 states, "Any such conclusions that are inconsistent with the
4 residual functional capacity established above are
5 unpersuasive, because they are inconsistent with the evidence
6 referenced above regarding the claimant's activities of daily
7 living and positive response to treatment." As I indicated,
8 I'm not sure at all that those reports are inconsistent with
9 the residual functional capacity finding.

10 So I conclude, in any event, there is no error in
11 connection with consideration of the reports of those two
12 psychologists.

13 The second argument relates to the listed
14 presumptively disabling conditions of the Commissioner's
15 regulations. Of course, to meet or equal one of those
16 listings, all criteria set out must be met. Plaintiff
17 challenges consideration of listings 12.03, schizophrenia;
18 12.04, depression; 12.08, impulse control issues and
19 personality issues; and 12.11, neuro-developmental disorders.
20 All require consideration of the so-called B criteria. There
21 are four domains set out, and the plaintiff must have either
22 one extreme limitation in one of those four domains or two
23 marked.

24 The ALJ concluded that there were moderate
25 limitations in understanding, remembering, or applying

1 information, moderate limitations in interacting with others,
2 moderate difficulties in concentrating, persisting or
3 maintaining pace, and moderate difficulties in adapting or
4 managing oneself. It is true that unlike some of the
5 Administrative Law Judge's decisions that I've seen, they're
6 not broken out and discussed separately; they are lumped into
7 one paragraph on page 16 of the Administrative Transcript.
8 However, the substantial evidence supports that conclusion
9 when you consider Dr. Shapiro's consultative report, which
10 shows no more than mild limitations in any area, and the
11 several state agency consultants who reviewed the plaintiff's
12 records and also found no more than mild limitations.

13 The conclusion is also supported by the plaintiff's
14 activities of daily living and response to treatment. I
15 don't find any duty to separately carve out those four areas
16 and discuss them separately. Plaintiff's arguments are based
17 primarily on the reports of Dr. Lopez Williams, Dr. Boucher,
18 and Physician's Assistant Amy McCune, but PA McCune's opinion
19 was found unpersuasive and plaintiff hasn't challenged that
20 finding. And as I indicated previously, Dr. Lopez Williams
21 and Dr. Boucher did not identify specific marked limitations.

22 So I don't find any error and I cannot say that a
23 reasonable fact-finder would have to have found that
24 plaintiff meets the B criteria by having two marked or one
25 extreme limitation among the four domains.

1 The third argument concerns the residual functional
2 capacity. A claimant's RFC, of course, represents a range of
3 tasks that he is capable of performing notwithstanding his
4 impairments. Ordinarily it represents a claimant's maximum
5 ability to perform sustained work activities in an ordinary
6 setting on a regular and continuing basis, meaning eight
7 hours a day for five days a week, or an equivalent schedule.

8 An RFC determination is informed by consideration
9 of all of the relevant medical and other evidence. In this
10 case ALJ Eldred crafted a very restrictive when it comes to
11 the mental component of the RFC. The RFC in my view is
12 supported by the opinion of Dr. Shapiro. It's supported by
13 the state agencies, although both were found rather
14 unpersuasive. That was because the Administrative Law Judge
15 concluded based upon the entirety of the record, including
16 plaintiff's testimony, that he was more limited. But even
17 though those were rejected for that reason, they certainly
18 can still support the RFC.

19 Again, the activities of daily living of the
20 plaintiff were relied on, and the fact that records,
21 treatment records show improvement with treatment and
22 medication. He relied also on plaintiff's testimony that he
23 had looked for work but it was his criminal record that made
24 it difficult to find employment. These are all proper
25 considerations. Plaintiff argues that there is no medical

1 opinion that precisely tracks the residual functional
2 capacity, but there is no duty or obligation on the part of
3 the ALJ to track any one particular opinion. *Moxham v.*
4 *Commissioner of Social Security*, 2018 WL 1175210, from the
5 Northern District of New York, 2018.

6 I will acknowledge that in many respects, including
7 this one, the Administrative Law Judge's decision is not a
8 model of clarity. He did not explain why he concluded
9 plaintiff can have occasional contact with supervisors and
10 co-workers but no contact with the public. But as I said
11 before, Dr. Shapiro didn't find any limitations in this area.

12 The treatment notes consistently refer to plaintiff
13 as respectful, cooperative. The state agency consultants,
14 including at 73 and 92, found no social limitations. And
15 Dr. Boucher himself found, "intact ability to interact
16 appropriately with others in settings akin to the testing
17 situation," at 286. So the fact that there is a more
18 limiting provision in the RFC dealing with interaction, it's
19 harmless error, it does not undermine the decision.

20 So I find the residual functional capacity is
21 supported by substantial evidence. I will say that Attorney
22 Chadwick did a commendable job at raising arguments in
23 support of her client's position and argued well;
24 unfortunately, however, I find that I must award judgment on
25 the pleadings to the defendant and order dismissal of

1 plaintiff's complaint.

2 Thank you both. I hope you have a wonderful rest
3 of your summer.

4 * * *

5
6 C E R T I F I C A T I O N

7
8 I, EILEEN MCDONOUGH, RPR, CRR, Federal Official
9 Realtime Court Reporter, in and for the United States
10 District Court for the Northern District of New York,
11 do hereby certify that pursuant to Section 753, Title 28,
12 United States Code, that the foregoing is a true and correct
13 transcript of the stenographically reported proceedings held
14 in the above-entitled matter and that the transcript page
15 format is in conformance with the regulations of the
16 Judicial Conference of the United States.

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21 EILEEN MCDONOUGH, RPR, CRR
22 Federal Official Court Reporter
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